



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173934

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 26, 2016, at Neenah, Wisconsin.

The issues for determination are: 1) Whether the agency removed "[REDACTED]" from Petitioner's case in January 2016; 2) Whether Petitioner can put his son on his FoodShare case retroactively to January 1, 2016, to get an increase in benefits; 3) Whether the agency correctly counted the son's SSI income in determining the Petitioner's household income and benefits.

NOTE: The record was held open until June 9, 2016, to give the Petitioner and the agency an opportunity to submit additional documentation.

The Petitioner submitted a letter from the mother of his child, regarding the child's social security income. It has been marked as Exhibit 8. The Petitioner also submitted correspondence from the Social Security Administration. This has been marked as Exhibit 9.

The agency submitted a notice dated March 31, 2016 (Exhibit 10); a notice dated August 19, 2015 (Exhibit 11); Case Comments (Exhibit 12); and FoodShare budgets (Exhibit 13)

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Fair Hearing Coordinator
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On August 19, 2015, the agency sent the Petitioner a notice that his benefits would go up from \$16.00 per month to \$140.00 per month, effective August 19, 2015. (Exhibit 11)
3. In January 2016, a person referred to as "[REDACTED]" was removed from the Petitioner's case, because she became incarcerated. (Exhibit 12)
4. On March 21, 2016, the Petitioner completed a FoodShare renewal. At that time, the Petitioner reported that he had 50/50 custody of his son and that his son spends every other week with him. Consequently, the Petitioner's son was added to the Petitioner's case. (Exhibit 12)
5. On March 31, 2016, the agency sent the Petitioner a notice, indicating that effective May 1, 2016, his benefits would be reduced from \$132.00 per month to \$19.00 per month. (Exhibit 10)
6. Petitioner's son is 16 years old and receives \$640.34 in Federal Supplemental Security Income (SSI) and \$83.78 in State SSI benefits. The child's mother is his payee and gives to the Petitioner \$350.00 of the child's SSI per month. (Exhibits 3, 8 and 9)
7. The Petitioner receives \$717.00 per month in SSDI payments, \$36.00 per month is Federal SSI and \$83.78 per month in State SSI benefits. (Exhibits 4 and 5)
8. Petitioner pays \$525.00 per month in rent and pays utilities that include a heating expense. Petitioner reported no out of pocket medical expenses that total more than \$35.00 per month. (Exhibit 10)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 26, 2016. (Exhibit 1)

DISCUSSION

At the hearing, the Petitioner indicated that he wanted his benefits for the months of January through April 2016 to be reviewed, because he wanted "[REDACTED]" to be removed from his case. The Petitioner also indicated that he wanted his son to be added to his case, effective January 1, 2016. However, the Petitioner also indicated that he did not think his son's SSI should be counted when calculating the Petitioner's household income.

With regard to removing "[REDACTED]" from the Petitioner's case, the agency already did this in January 2016. This is noted both in the case comments and the FoodShare Budget print out for January 2016. (See Exhibits 11 and 12).

It seems that the Petitioner seeks to add his son to his case for the months of January, February, March and April, because he believes his Food Share benefits for January through April would increase. Assuming arguendo that this is true, the Petitioner would not be entitled to receive a supplement to his benefits for those months. Per *FoodShare Wisconsin Handbook (FSH)* §7.4.1.1, under-issued benefits may only be restored, if the household did not cause the under-issuance. Here, the Petitioner caused the alleged under-issuance of benefits, because he did not report his son in his home, until he completed his renewal in late March 2016, which would mean the change in allotment, caused by the change in household composition and income, could not take effect until May 1, 2016.¹

The remaining question, is whether the agency correctly included the son's SSI income when calculating the Petitioner's household income.

Petitioner argues that his son's SSI benefits should not be counted when determining his household income, because the Petitioner has no control over the funds, since the son's mother is the payee of the SSI benefits.

The FoodShare Wisconsin Handbook states that eligibility and benefit calculations are based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1* The Handbook further instructs agencies to "Only include income **actually available to the food unit**."² *Id.*, *Emphasis added*.

In general, Social Security payments are to be counted in the household income. *FSH §4.3.4.2, paragraphs four and five*. However, *FSH §4.3.4.1* states that unearned income shouldn't be counted when the money isn't available to the food unit.

Thus, the question isn't whether the son's SSI payment is available to the Petitioner, the question is whether it is available to either the Petitioner **or** the son, such that it is available to the food unit, as a whole.

Exhibit 8 clearly establishes that at least \$350 of the son's SSI is, in fact, available to / ready for use by the Petitioner, because the child's mother gives it to him. Thus, that portion must be counted when determining the Petitioner's household income.

With regard to the remaining balance of the SSI payment, it belongs to the Petitioner's son and is to be used for his benefit. It is completely illogical to believe the Social Security Administration would disburse funds to the child for any other reason. As such, it should be immediately available to the son for his support. Indeed, if the child's mother does not make the money available for the child's immediate use/needs, she would be in breach of her duties as the payee.

There might be circumstances where unscrupulous payees withhold funds from the SSI recipient and refuse to make them ready for the recipient's immediate use, but there is no evidence that that is the case here. Indeed, Petitioner has made no claim that the child's mother uses the SSI payment for anything, but the child's benefit, nor has the Petitioner made the claim that the child's mother would refuse to give the Petitioner additional funds from the SSI payment, if he needed to pay an expense for the child. As such, it is found that the balance of the SSI payment is available to the son, and must, therefore, be counted when determining the Petitioner's household income.

¹ Petitioner's allotment was actually reduced, because he added his son to his case. Per *FSH §6.3.1*, the agency must give 10-days notice of adverse action. The Petitioner reported his son in the household on March 21, 2016, but the case was pended for verification of Medical Expenses. As such, the agency could not calculate the Petitioner's allotment and reduce the Petitioner's benefits effective April 1, 2016, since that would provide less than ten days notice of adverse action. So, the change necessarily had to take effect May 1, 2016.

² "Food Unit" means all people living in the same household who purchase and prepare food for home consumption. *FSH §3.3.1.1*

Reviewing the agencies calculations, I can find no error with its determination that effective May 1, 2016, going forward, the Petitioner is entitled to FoodShare benefits in the amount of \$19.00 per month and Petitioner indicated that he was not really appealing that calculation..

CONCLUSIONS OF LAW

- 1) The agency correctly excluded "██████" from Petitioner's household, in January 2016.
- 2) The Petitioner is not entitled to any back benefits, even if his son is included in his household for the months of January 2016 through April 2016, because Petitioner did not report his son in the home until late March 2016.
- 3) The agency correctly included the SSI income of Petitioner's son, when calculating the Petitioner's household / food unit income.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

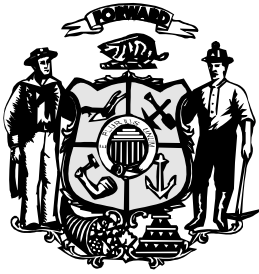
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of June, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 22, 2016.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability